HIGH COURT OF UTTARANCHAL AT NAINITAL

Criminal Misc. Application No. 382 of 2006

1. Gudadh Singh S/o Sri Pathan Singh
2. Mangal Singh S/o Sri Guddadh Singh
3. Kulwant Singh S/o Sri Guddadh Singh
   All R/o village Bichawa
   P.S. Nanakmatta
   District U. S. Nagar ……Applicants

Versus

1. Addl. Judicial Magistrate, Khatima
   District U.S. Nagar
2. State of Uttaranchal
   Through it Secretary Home, Dehradun
3. Smt. Koushaliyabai
   W/o late Sri Variyam Singh
   R/o village Bichawa
   P.S. Nanakmatta
   District U.S. Nagar …Respondents

Sri B.S khanka learned counsel for the applicants.
Shri Amit Bhatt and Sri Rajeev Mohan learned A.G.A.

Hon'ble J.C.S. Rawat, J.

1. The petition under section 482 Cr.P.C. has been filed for quashing the proceedings and the summoning order dated 17.03.2006 passed by the Addl. Judicial Magistrate, Khatima in criminal case No.1650/2005 under section 302, 201, 214, 506, 120-B I.P.C.

2. Brief facts of the case are that the respondent No.3-Smt. Koushaliyabai lodged and FIR at the police station alleging therein that her husband Variyam had been murdered by the applicants. Thereafter, the police investigated the matter and submitted the chargesheet against the applicants. When the Magistrate proceeded with the case, the respondent NO. 3 filed a criminal complaint case No. 1650/2005 before the Addl. Judicial magistrate, Khatima alleging therein her husband went

to the jungle alongwith other accused persons to gaze the buffalos. When her husband did not return to his house, a search was made and ultimately his dead body was found near' danda nala'. The complaint was filed under section 302 IPC simultaneously. The magistrate recorded the statements under section 200 & 202 Cr.P.C. and thereafter he recorded the cognizance order. The applicant moved an application before the trail court alleging therein that the respondent had filed a complaint before the trail court and he had also lodged an FIR for the same incident. It was further alleged that both cases are simultaneously proceeding before the trial court with regard to the single incident. It was further alleged that the proceeding of the compliant case may be stayed under section 210 Cr.P.C. On 31.05.2006 the Magistrate rejected the application on the ground that the police has submitted the chargesheet against the applicants and they have been released on bail by the competent court and the said case is pending before the Special Judicial Magistrate, Khatima. It was further held that the proceedings can only be stayed when the matter is under –investigation. Feeling aggrieved by this, the applicants have preferred this petition.

3. Sub-section 2 of section 210 Cr.P.C. provides as under:-

> "210.. Procedure to be followed when there is a complaint case and police investigation in respect of the came offence:- (2) If a report is made by the investigating police officer under section 173 and on such report cognizance of any offence is taken by the Magistrate against any person who is an accused in the complaint case, the Magistrate

shall inquire into try together the complaint case and the case arising out of the police report as if both the cases were instituted on a police report.''

4. Sub-section(2) provides that when the police report is filed, the complaint shall be deemed to be a police report as to the accused persons common to both the cases, and if some accused of the complaint case are not included in the police report, the inquiry or trail stayed will proceed according to the provisions of the Code. Sub-section (2) of section 210 Cr.P.C. enjoins a duty upon the Magistrate to consider whether he has taken congnizance of an offence against the accused who is an accused in the complaint case and if it is found that actually he had taken congnizance of the offence as contemplated under sub-section (1) of section 210, then he shall try both the cases together. If it is found that the police report does not relate to the accused in the complaint case and the magistrate has not taken congnizance of any offence, then he shall proceed to inquire or try the case which was stayed by him.

5. In the instant case, the complaint and the FIR is related to the same incident. I do not understand why the magistrate rejected the application filed by the applicants. As a matter of fact, the Magistrate should have proceeded under section 210 Cr.P.C. Both the cases are pending in the different courts. It would be just and proper to club both the matters. Therefore, these two cases shall stand transferred to the court of Chief Judicial Magistrate, U. S. Nagar for further inquiry and trail. In view of the above, the order dated 31.05.2006 passed by the learned Magistrate is bad in law and the same is liable to be set aside. Therefore,

The order dated 31.05.2006 passed by the learned Magistrate is set aside.

6. The petition is disposed of accordingly. All the pending miscellaneous applicants (s) in this case, if any, shall stand disposed of accordingly.

(J.C.S. Rawat, J.)

Dated 07.06.2006
LSR